

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**ANYWHERECOMMERCE, INC.
and BBPOS LIMITED,
Plaintiffs,**

v.

**INGENICO INC., INGENICO CORP.
and INGENICO GROUP, SA,
Defendants.**

**CIVIL ACTION NO.
1:19-cv-11457-IT**

**DEFENDANTS' STATEMENT OF ADDITIONAL
UNDISPUTED MATERIAL FACTS PRECLUDING
SUMMARY JUDGMENT**

Pursuant to Rule 56.1 of the Local Rules for the United States District Court for the District of Massachusetts, Defendants Ingenico Inc., Ingenico Corp., and Ingenico Group, S.A. (collectively, "Defendants" or "Ingenico") respectfully submit this Statement of Additional Undisputed Material Facts Precluding Summary Judgment in opposition to Plaintiffs' Motion for Summary Judgment on Ingenico's Second Amended Counterclaims (Doc. No. 189).

1. On December 9, 2015, Chris Dismukes of ROAM Data and Robert Cook, President and General Manager of BBPOS, spoke by telephone, during which telephone conversation Mr. Cook indicated that (a) BBPOS had accepted an order for ROAM-type MSR devices directly from ROAM Data's longtime client, North American Bancard, LLC ("NAB"), and (b) BBPOS and NAB had openly discussed NAB's cancellation of an order for MSR devices that NAB recently placed with ROAM Data that is scheduled to be fulfilled by BBPOS prior to the end of 2015, and further that NAB had separately contacted ROAM Data to cancel its PO with ROAM Data for such devices, and that BBPOS had specifically requested that ROAM Data

permit NAB to cancel that PO so that BBPOS could fulfill the order it received directly from NAB. Attached as **Exhibit 1** is an email dated December 10, 2015 from David Szczepanski, COO of Ingenico, to Cook memorializing the above-mentioned conversation.

2. In response to ROAM Data's demand that BBPOS, *inter alia*, cease and desist from interfering with ROAM Data's contractual relationship with NAB, Matthew Ng, Finance Director of BBPOS Group wrote to ROAM Data on December 17, 2015 stating on behalf of BBPOS that "We hereby confirm that we cease to interfere with Roam Data's ('RD') contractual relationship with [NAB] and we confirm that we will fulfill RD order for the MSR's destined for NAB." Mr. Ng further stated that "the acquisition of RD by Ingenico has triggered the event of transfer of RD to a competitor under Section 1.2 and the Agreement was deemed to be terminated as a result." The above-mentioned December 17, 2015 correspondence from Mr. Ng to ROAM is attached as **Exhibit 2**.

3. Notwithstanding Mr. Cook's December 17, 2015 statement that the Agreement had been deemed to be terminated, BBPOS confirmed in its December 10, 2021 Rule 30(b)(6) testimony that the Agreement had never been terminated. *See* Dec. 10, 2021 BBPOS Rule 30(b)(6) Deposition (Doc. No. 193-2) at 50:11-15.

4. BBPOS contends, through its disclosed damages expert, that it would be erroneous to assume that sales made by BBPOS within the exclusive territory set forth in the ROAM-BBPOS license agreement would be lost Ingenico sales that would constitute lost profits in light of the estimated 230 providers in the mobile payment space. *See* April 17, 2022 Rebuttal Expert Report by Stephen J. Scherf, CPA/CFF, CFE (attached as **Exhibit 3**) at 9.

INGENICO INC., INGENICO CORP. AND
INGENICO GROUP, SA,

By their attorneys,

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Dated: July 13, 2022

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2022, I caused to be served via electronic mail a true copy
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